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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/902,092	07/11/2001	Vincent De Lafocade	05725.0945-00000	8085

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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER  
LLP  
1300 I STREET, NW  
WASHINGTON, DC 20005

EXAMINER

DOAN, ROBYN KIEU

ART UNIT

PAPER NUMBER

3732

DATE MAILED: 05/21/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

N.K.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/902,092	DE LAFORCADE, VINCENT
	Examiner Robyn Doan	Art Unit 3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on Amendment filed 02/19/2003.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-12 and 14-25 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-12 and 14-25 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \*    c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.

4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

**DETAILED ACTION**

Applicant's Amendment filed 02/19/2003 has been entered and carefully considered. Claims 1, 4, 8-9, 15-17 have been amended. New claims 18-25 have been added. Limitations of new and amended claims have not been found to be patentable over prior art of record and newly discovered prior art; therefore claims 1-12, 14-25 are rejected under the new ground rejections as set forth below.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Montiel in view of Spector.

With regard to claims 1 and 3, Montiel discloses a cosmetic product (fig. 1) comprising a container (12) having a foam core (16), at least one recess (20) forming in the foam core which contains a cosmetic composition (col. 1, lines 45-46); the cosmetic composition including a cosmetic substance deposited directly in the at least one recess (col. 1, lines 51-53). Montiel does not disclose a covering material covering at least a portion of the foam core and defining an exterior surface of the cosmetic

product, wherein the covering material comprises a material other than foam. Spector discloses a cosmetic container (fig. 2) comprising a container (10) having a fabric covering material (11). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the covering material as taught by Spector into the cosmetic container of Montiel for the purpose of providing aesthetic look.

Claims 1-2, 4-5, 7-8, 17, 19, 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Skarne in view of Spector.

With regard to claims 1, 4 and 11, Skarne discloses a cosmetic compact (figs. 2-3) comprising a base (28) and a cover (26) forming at least partially of foam (col. 2, lines 1-12), a hinge (30) connecting the base and the cover and at least one recess (54) forming in the base and the recess containing a cosmetic composition or for removably holding a cosmetic applicator. In regard to claims 2, 5 and 17, Skarne shows the cosmetic substance containing within a tray (compartment 52), such the edges of the at least one recess contacting edges of the tray (fig. 3). In regard to claims 7 and 14, the hinge being integrally formed with the base and the cover and partially of foam (col. 2, lines 19-23). In regard to claim 10, the compact further having a mirror (22) and a recess (50) in the cover containing and surrounding edges of the mirror (fig. 3). In regard to claims 12-13, Skarne also shows the base and the cover having a portion of a fastener which is a snap (36) having a first portion being partially embedded within the cover and a second portion being partially embedded within the base (fig. 3). Skarne

does not disclose a fabric covering material covering at least a portion of the foam core and defining an exterior surface of the cosmetic product, wherein the covering material comprises a material other than foam. Spector discloses a cosmetic container (fig. 2) comprising a container (10) having a fabric covering material (11). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the covering material as taught by Spector into the cosmetic container of Skarne for the purpose of providing aesthetic look.

Claims 9, 15, 18, 20, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Skarne in view of Spector.

With regard to claims 9, 15, 18, 20 and 21, Skarne discloses a cosmetic compact (figs. 2-3) comprising all the claimed limitations in claims 4 as discussed above except for the hinge being constructed of foam core and the covering material being Lycra. It would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to construct the hinge of foam core as same with the base and the cover and also employ the Lycra material for the covering since applicant has not disclosed that such solves any stated problem or is for any particular purpose.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Skarne in view of Spector and further in view of Gueret.

With regard to claim 6, Skarne in view of Spector disclose a cosmetic compact comprising all the claimed limitations in claim 4 as discussed above except for the

cosmetic composition being directly deposited in the at least one recess. Gueret discloses a cosmetic compact (fig. 2) comprising a base (5), a cover (2), the base having at least one recess (11c) wherein the cosmetic composition (8) being directly deposited in the recess. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to deposit the cosmetic composition directly in the recess as taught by Gueret into the compact of Skarne and Spector for the intended use purpose.

Applicant has argued that the recess (20) of Montiel is a cross-slit rather than a recess, therefore it could not contain a cosmetic composition; however, the slit of Montiel is basically a hole and it is configured to hold a cosmetic composition (18). Also, Applicant has argued that Skarne does not disclose a covering material, however, Spector showed the covering material, therefore, it would be proper to combine. It is noted that the purpose of the covering material claimed by Applicant is for aesthetic look and the covering material of Spector is used for the same purpose.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

Art Unit: 3732

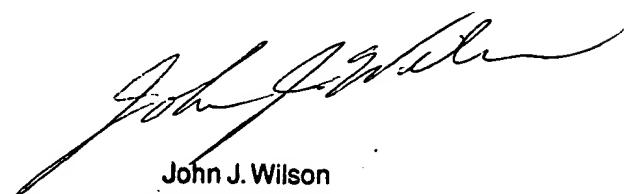
TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (703) 306-9182. The examiner can normally be reached on Mon-Fri 9:30-7:00; alternate Mondays off.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



Robyn Kieu Doan  
Examiner  
May 16, 2003



John J. Wilson  
Primary Examiner